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Date of Decision: 5th December 1995

CRIMINAL APPEAL NO. 442 OF 1988
with
CRIMINAL APPEAL NO. 666 of 1988

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA
and
HONOURABLE MR. JUSTICE H.R. SHELAT

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judg...

Shri K.J. Shethna, Advocate, for the Appellants (in Criminal Appeal No. 442 of 1988) and for the Respondents (in Criminal Appeal No. 666 of 1988)

Shri S.R. Divetia, Additional Public Prosecutor, for the Respondent (in Criminal Appeal No. 442 of 1988) and for the Appellant in (in Criminal Appeal No. 666 of 1988)

Shri D.D. Vyas, Advocate, for the Original Complainant (in both the appeals for assisting the Addl. Public Prosecutor)

CORAM: A.N. DIVECHA & H.R. SHELAT, JJ.
(Date: 5th December 1995)

ORAL JUDGMENT (per Divecha, J.)

It is unfortunate that the inter-union rivalry in the group of companies in the complex known as the Atul Complex near Valsad has taken a toll of life of one union leader, named, Gunvantbhai Desai (the deceased for convenience). The question is who has killed him. According to the learned Additional Sessions Judge of Valsad at Navsari appellant No. 1 (accused No. 1 for convenience) of Criminal Appeal No. 442 of 1988 was the murderer. That finding is given by the learned trial Judge by his judgment and order passed on 11th May 1988 in Sessions Case No. 62 of 1986. The learned trial Judge has also found the remaining appellants (accused Nos. 2 to 4 and 8 for convenience) in Criminal Appeal No. 442 of 1988 to be accomplices inasmuch as they have been held guilty of the offence punishable under sec. 302 read with sec. 149 of the Indian Penal Code, 1860 (the IPC for brief). The learned trial Judge has also convicted accused Nos. 1 to 4 and 8 of the offences punishable under sections 147 and 148 thereof and also of the offence punishable under sec. 336 read with sec. 149 thereof and also of the offence punishable under sec. 427 read with sec. 149 thereof and accused Nos. 2, 3 and 4 of the offence punishable under sec. 323 thereof and accused Nos. 1 and 8 of the offence punishable under sec. 323 read with sec. 149 thereof. It is needless to say that the learned trial Judge has convicted accused No. 1 of the offence punishable under sec. 302 of the IPC. So far as the imposition of the sentence is concerned, the learned trial Judge has awarded a lifer each to accused Nos. 1 to 4 and 8 for the respective offences found to have been committed by them and rigorous imprisonment for one year to accused Nos. 1 to 4 and 8 for the offence punishable under sec. 148 of the IPC without passing any separate sentence for the offence punishable under sec. 147 thereof. The learned trial Judge has also awarded rigorous imprisonment for one month to accused Nos. 2, 3 and 4 for the offence punishable under sections 323 thereof and rigorous imprisonment for two months to accused Nos. 1 to 4 and 8 for the offence punishable under sec. 336 read with sec.. 149 of the IPC without passing any order of sentence for the offence punishable under sec. 337 read with sec. 149 thereof. The learned trial Judge has also awarded the sentence of rigorous imprisonment for three months to the aforesaid accused for the offence punishable under sec. 427 read with sec. 149 thereof. All the substantive sentences were ordered to run concurrently by the learned trial Judge. In the process, the learned trial Judge acquitted the respondents of Criminal Appeal No. 666 of 1988 (accused Nos. 5,6, 7 and 9 for convenience) of the charge levelled against them. The judgment and order of the learned trial Judge has aggrieved the accused who came to be convicted and they have therefore preferred Criminal Appeal No. 442 of 1988 for questioning the correctness of their conviction and sentence. The prosecution was also unhappy with respect to the judgment and order qua the accused

who came to be acquitted of the charge levelled against them. It has also chosen to come in appeal after obtaining leave to appeal against the judgment and order in question. Its appeal has come to be registered as Criminal Appeal No. 666 of 1988. Since both the appeals arise out of the same judgment and order passed by the learned Additional Sessions Judge of Valsad at Navsari in Sessions Case No. 62 of 1986 and since common questions of law and fact are found arising in both these appeals, we have chosen to dispose of both these appeals by this common judgment of ours by consent of the learned lawyers appearing for the parties.

2. The factual backdrop of the case deserves to be looked at. The Atul complex, as is popularly known in the area, houses plants of in all four companies, namely, the Atul Products Ltd., Cyanamide India Ltd., Cibatul Ltd. and Atik Industries Ltd. It appears that there are three unions of workmen operating within the complex. It is not necessary to refer to their nomenclatures at present. Suffice it so say that the deceased was the President of one union. It appears that there were some disputes between the management and the workers through their unions. It appears that the union headed by the deceased along with another union entered into a settlement with the management. The third union, which claimed to possess majority of workmen as its members, was sore and unhappy about such settlement. It appears that conditions of unrest was prevalent around that time. It is the prosecution version that at about 12.55 p.m. on 12th May 1986 a rioting mob rushed towards the canteen and started indulging into stone throwing activities in the beginning. Accused Nos. 1 to 8 were stated to be members of the rioting mob. It is the prosecution version that accused No. 1 was armed with a knife and accused No. 2 with an iron pipe. Others were armed with stones and brickbats. At the relevant time the deceased was inside the canteen in a room taking rest during his recess hours. One Kishore Bhagat (the complainant for convenience) was in the main canteen room having finished his lunch during recess. It is the prosecution case that the complainant was hit on his head by accused No.2 with an iron pipe. The complainant was also in the company of certain other persons and they also received injuries on account of hurling stones and brickbats by the irate mob including accused Nos. 3 to 8. The prosecution version further reveals that the injured complainant went inside where the deceased was resting and gave an alarm of the grave situation. Thereupon the inmates of the inner room thought of fleeing from the canteen. At that stage, runs the prosecution version, accused No. 1 rushed inside and gave knife-blows to the deceased in his chest and abdomen. That proved fatal. The deceased in the company of three injured persons were carried to the Municipal Hospital at Valsad. The deceased was found dead thereat. The other three injured were given treatment by the medical officer present at

the relevant time. The complainant gave his complaint at about 2 p.m. Thereupon the investigation machinery was set to motion. One Executive Magistrate was summoned for recording dying declarations of the three injured persons including the complainant. The dead body of the deceased was consigned for its post-mortem examination after drawing the inquest panchnama. On completion of investigation, the charge-sheet was submitted to the Court of the Chief Judicial Magistrate at Valsad charging the accused inter alia with the offence punishable under sec. 302 of the IPC and also that punishable thereunder read with sec. 149 thereof. The accused also stood chargesheeted inter alia with the offences punishable under sections 147, 148, 323, 336, 337 and 427 thereof. Since the trial of the case was beyond the competence of the learned magistrate, the case was committed to the Sessions Court of Valsad at Navsari for trial and disposal. It came to be registered as Sessions Case No. 62 of 1986. It appears to have been assigned to the learned Additional Sessions Judge for trial and disposal. The charge against the accused was framed on 4th May 1987. No accused pleaded guilty to the charge. Thereupon they were tried. After recording the prosecution evidence and also further statements of the accused under sec. 313 of the Code of Criminal Procedure, 1973 and after hearing rival submissions, by his judgment and order pronounced on 11th May 1988 in the aforesaid sessions case, the learned Additional Sessions Judge found accused No. 1 to be guilty of the offence punishable under sec. 302 of the IPC and accused Nos. 2 to 4 and 8 of the offence punishable under sec. 302 read with sec. 149 of the IPC and accused Nos. 2, 3 and 4 of the offence punishable under sec. 323 thereof and accused Nos. 1 and 8 of the offence punishable under sec. 323 red with sec. 149 of the IPC and accused Nos. 1 to 4 and 8 of the offences punishable under sections 147, 148, 336 read with sections 149, 337 read with sections 148 and 427 read with sec. 149 thereof. They have been sentenced as stated earlier hereinabove in the introductory para of this judgment. The other accused, namely, accused Nos. 5, 6,7 and 9 came to be acquitted by the learned trial Judge. The aforesaid judgment and order passed by the learned trial Judge aggrieved both the convicted accused and the prosecution. Both have therefore questioned its correctness by means of their respective appeals.

3. The prosecution has examined as many as 11 eye witnesses in support of its case at trial. The prosecution has also examined several other witnesses in support of its case and also for bringing on record certain documentary evidence like the recovery panchnama, the so-called dying declarations and the like. The medical evidence consists of the report pertaining to the post-mortem examination of the deceased and certificates issued with respect to the injured persons including the complainant. The medical evidence also pertains to injuries found on the persons of accused Nos. 1, 3 and 4. Both learned

Advocate Shri Shethna for the convicted-accused and learned Additional Public Prosecutor Shri Divetia for the prosecution have taken us through the entire evidence on record in support of their respective submissions assailing the judgment and order passed by the learned trial Judge to the extent it is not acceptable to them. According to Shri Shethna for the convicted-accused, the learned trial Judge has not appreciated in true spirit the infirmities found in the prosecution version. It has been urged on behalf of the convicted-accused that the cumulative effect of the infirmities in the prosecution version would lead only to one conclusion to the effect that no accused was guilty of any of the offences with which all the accused were charged. As against this, learned Additional Public Prosecutor Shri Divetia has supported the conviction of accused Nos. 1 to 4 and 8 and has submitted that the material on record bears ample testimony to justify the finding of conviction recorded by the learned trial Judge qua the aforesaid accused. Learned Additional Public Prosecutor Shri Divetia has however been critical of the learned trial Judge in not convicting accused Nos. 5, 6, 7 and 9 though the material on record would warrant their conviction as well.

4. The first infirmity in the prosecution case highlighted by learned Advocate Shri Shethna for the convicted-accused is the interpolation of the time of the incident in the complaint (popularly known as the F.I.R.) at Exh. 131. It transpires therefrom that the time of the incident stated to have occurred at 12.55 p.m. was interpolated later on. The evidence of the police witnesses at Exhs. 130 and 133 would bear ample testimony in that regard. The complaint was recorded by Senior Sub-Inspector Shri Earda at Exh. 130. He was confronted with the interpolation in the complaint about the time of the incident stated to be 12.55 p.m. He has admitted that he did not know as to who inserted that time in the original complaint. The investigating officer at Exh.133 who took over investigation from the witness at Exh. 130 at about 4 p.m. on that very day has also drawn blank in that regard. In his deposition at Exh. 133, he has clearly pleaded ignorance in that regard. In that view of the matter, there is no hesitation in coming to the conclusion that the time of the actual occurrence of the incident is shrouded in mystery.

5. It transpires from the depositions of several witnesses including the Timekeeper (Prosecution Witness No. 12) at Exh. 75 that the working hours of the first shift are from 7.30 a.m. to 3.30 p.m. with recess between 11.30 a.m. and 12 noon and the general shift are from 8 a.m. to 5 p.m. with one hour recess between 12 noon and 1 p.m. Accused No. 1 was admittedly working in the first shift and the other accused were in the general shift. The complainant was also working in the general shift. As observed earlier, the recess time for the first shift

was from 11.30 a.m. to 12 noon. The Timekeeper at Exh. 75 has admitted in no uncertain terms that no accused was found missing from his job at the relevant time. He has specifically admitted in his cross-examination that all accused were on their job throughout the day on 12th May 1986. The Personnel Manager (Prosecution Witness No. 18) at Exh. 108 also admits in his cross-examination that it was not reported that any accused was absent from his work on 12th May 1986 at any point of time. For the time being we should like to take up the case of accused No. 1. He was working in the first shift. As aforesaid, its working hours were from 7.30 a.m. to 3.30 p.m. with half an hour recess from 11.30 a.m. to 12 noon. In view of the depositions of the Timekeeper at Exh. 75 and the Personnel Manager at Exh. 108, accused No.1 was on his job, presumably except for his recess time. If he was on his job throughout the day of the incident, that is, 12th May 1986, he was on his job between 12 noon and 3.30 p.m. If that be so, his presence at the place of the incident at 12.55 p.m. becomes a doubtful proposition.

5. So far as the other accused are concerned, they were working in the general shift. Their recess was between 12 noon and 1 p.m. It has come on record through certain prosecution witnesses including the Timekeeper at Ex. 75 that no workman is allowed to overstay his recess. If any one reports late after recess, he has to give explanation for it. It has also come in evidence that the plant where accused Nos. 2 to 9 were working had a canteen nearby and the main canteen where the incident is stated to have occurred is somewhat at a distance from the plant where they were working. Ordinarily, it would be natural for those workmen to go to the nearby canteen during their recess timings rather than going to a canteen situated somewhat at a distance. Even assuming that they could have gone to a canteen somewhat away from the plant where they were working, they could not have reported back to their duty on time if they were participating in the rioting activities of the irate mob at 12.55 p.m. Even at the cost of repetition, we may reiterate that it clearly transpires from the depositions of certain witnesses including that of the Timekeeper at Exh. 75 that no accused reported late for work on that day even after recess. This evidence on record would again cast a serious doubt as to the presence of the accused at the place where the incident is stated to have taken place on 12th May 1986.

6. Learned Additional Public Prosecutor Shri Divetia has however highlighted the ocular account of the incident given by certain eye witnesses involving the accused as members of the rioting mob and seeing accused No.1 committing the murder of the deceased. That should take us to the ocular account given by the eye witnesses. As aforesaid, the prosecution has examined as many as 11 persons stated to be eye witnesses to the

incident. Out of these 11 witnesses, as many as 4 have turned hostile to the prosecution. Their evidence is of no use to the prosecution in any manner. Prosecution Witness No. 3 (Sorab Shavaksha) at Exh. 50 was also branded as hostile for the purpose of subjecting him to cross-examination by and on behalf of the prosecution in view of certain statements made by him in his police statement. Learned Additional Public Prosecutor Shri Divetia wants to rely on his evidence and we have therefore not included him in the list of four hostile witnesses referred to earlier. It may be noted that Prosecution Witness No. 22 at Exh. 115 was stated to be an eye witness. He was stated to be injured at the time of the incident. His dying declaration was also recorded and it is at Exh. 107 on the record of the case. He has not supported the prosecution case at trial and he has also been declared hostile. He has been included by us in the list of four hostile witnesses referred to hereinabove. Learned Additional Public Prosecutor Shri Divetia has fairly stated before us that the prosecution does not want to rely on depositions of the aforesaid hostile witnesses. So far as Prosecution Witness No. 4 at Exh. 57 is concerned, he is also stated to be an eye witness. In para 16 of his cross-examination he has clearly admitted that he could recognize only accused No.1 in the rioting mob. In view of his clear-cut admission in his cross-examination, the deposition at Exh. 57 is of no avail to the prosecution for the purpose of bringing the guilt home to the accused on the basis of his ocular account of the incident. So far as the involvement of accused No.1 in the incident is concerned, the testimony of the witness at Ex. 57 cannot be relied on in view of the evidence of certain witnesses including that of the Timekeeper at Exh. 75 and the Personnel Manager at Exh. 108 that accused No.1 was present on his job all throughout the first shift. In that view of the matter, the deposition of the witness at Exh. 57 cannot be accepted as a gospel truth. Prosecution Witness No. 5 at Exh. 58 has also been examined as an eye witness. He is stated to have seen accused Nos. 5, 6, 7 and 9 in the rioting mob at the relevant time. While identifying the accused present in the court-room, he misidentified them. That is recorded in para 3 of his oral testimony. He has not been declared as a hostile witness. His oral testimony is however of no use to the prosecution. That brings us to the ocular account given by Prosecution Witness No. 6 at Exh. 60. He is also examined as an eye witness. He is stated to have seen only accused No.8 in the rioting mob of about 20-25 persons behind the main rioting mob consisting of about 150-200 persons. The witness at Exh. 60 was stated to be working as a helper in the general shift. He had at the relevant time put in service of about 15 years. His conduct after the incident seems to be somewhat unnatural. His police statement was recorded on 15th May 1986. It is needless to reiterate that the incident occurred on 12th May 1986. It is not the prosecution case that he remained on leave

after the incident till his police statement was recorded on 15th May 1986. It has also come in evidence in no uncertain terms that, because of atmosphere of unrest prevalent in the complex at the relevant time, police personnel were present for maintenance of law and order situation in the Atul complex. In his cross-examination the witness at Exh. 60 has clearly admitted that he did not narrate the incident to any one in the company except to members of his family. He has also stated that he did not think it fit to report the incident to the police found in the compound. He did not think it fit to report the matter to his superior officer as transpiring from para 5 of his cross-examination at Exh. 60. His explanation in that regard was that he was in a perplexed condition. It would be a strange coincidence that his perplexed condition lasted for nearly three days because he has admitted that he has not reported this incident to any one during three days till his police statement was recorded on 15th May 1986. In our view, the ocular account given by Prosecution Witness No. 6 at Exh. 60 is devoid of credence and credibility on this ground alone.

7. It is not necessary to refer to Prosecution Witness No. 7 at Exh. 62 as he has been declared hostile and the prosecution does not want to rely on his evidence as fairly stated by learned Additional Public Prosecutor Shri Divetia. So is the case with Prosecution Witnesses Nos. 8 and 9 at Exhs. 63 and 64 on the record of the case. So far as Prosecution Witness No. 11 at Exh. 74 is concerned, he has also been examined as an eye witness. In his oral testimony he has pointed no accusing finger against any of the accused. He has not been declared hostile by or on behalf of the prosecution at trial. His oral testimony is therefore of no help to the prosecution in this case. Prosecution Witness No. 15 at Exh. 101, stated to be an eye witness, has also not stated a word about involvement of any accused in the incident in question. His evidence also will have to be discarded in supporting the prosecution case. That leaves only two eye witnesses, the complainant at Exh. 49 and Prosecution Witness No.3 (Sorab Shavaksha) at Exh. 50.

8. So far as the complainant is concerned, in his complaint at Exh. 131 he has stated that he was hit by an iron pipe in the hands of accused No. 2. According to the complaint at Exh. 131, accused No.2 was armed with an iron pipe at the relevant time and he hit the complainant with his iron pipe on his head from behind. It is the prosecution case that the injured complainant was immediately carried to hospital for treatment. It transpires from the evidence of Dr. M.D. Desai (Prosecution Witness No. 1) at Exh. 40 and the medical certificate at Exh. 41 that he reported to the medical officer that he received injury on account of stone-throwing. It appears that the version given by Dr. Desai at Ex. 40 about the history of

injury received by stone preceded recording of the complaint at Exh. 131 at 2 p.m. The incident is stated to have occurred at 12.55 p.m. He was soon carried to hospital along with the other injured persons and the deceased. He might have been examined by the medical officer around 1.30 p.m. The first version of the incident so far as the complainant is concerned is recorded by the doctor. At that stage, the complainant does not name accused No. 2. He does not even name the weapon of injury to be any iron pipe. On the contrary, the specific weapon of injury is shown to be some stone.

9. It would be quite proper at this stage to look at the complaint at Exh. 131. In that complaint the complainant has given the name of accused No.2 as the person causing injury to him with one iron pipe. It is not necessary for us at present to refer to the other contents of his complaint. Then comes his dying declaration at Exh. 106. Since the complainant has survived after recording of his dying declaration at Exh. 106, it would pale into insignificance as his dying declaration. It has to be read in evidence as his previous statement. In his previous statement at Exh. 106, he has stated that he was beaten by accused Nos. 1, 2, 3 and 4. He has further stated therein that he was hit with brickbats, stones and an iron pipe. It thus becomes clear from the three versions given by him on three different occasions that at every stage he has tried to improve upon it. Even at the cost of repetition, we may reiterate that the first version was to the medical officer that he was hit by a stone. In the second version in his complaint at Exh. 131, he has stated that he was hit with an iron pipe by accused No. 2. In the third version in his previous statement at Exh. 106 he has stated that he was hit by accused Nos. 1 to 4 with brickbats, stones and an iron pipe. These three versions were given by the complainant at Exh. 49 within a span of nearly three hours. As observed earlier, the complainant was treated by the medical officer at any time around 1.30 p.m. and his complaint was recorded at 2 p.m and his dying declaration was recorded between 3.31 p.m. and 3.48 p.m. on that very day. Within a span of less than three hours, he has tried to give three different versions of the incident. Every subsequent version can be said to be an afterthought. The prosecution has not chosen to explain discrepancies in the three versions given by the complainant as to the incident within a span of less than three hours. It is not the case of the prosecution that the complainant was taken aback and was subsequently stupefied on witnessing the ghastly incident of the murder of the deceased at the relevant time. It cannot be gainsaid that it was the duty of the prosecution to have explained the discrepancies in these three versions given by the complainant in the span of less than three hours. These discrepancies cannot be said to be quite trivial. They constitute serious infirmities and they certainly cause a substantial dent in the prosecution story rendering it

bereft of credence and credibility. We could have accepted the submission urged before us by learned Additional Public Prosecutor Shri Divetia that such discrepancies might arise when the evidence was recorded nearly a year after occurrence of the incident. However, the aforesaid three versions have occurred within a span of less than three hours. The discrepancies found in those three versions are quite eloquent and they are capable of raising a serious doubt as to involvement of the accused and more particularly accused No.1 in the incident in question. The oral testimony of the complainant at Exh. 49 is thus found unreliable and untrustworthy on this ground alone. It cannot help the prosecution in bringing the guilt home to the accused or any of them.

10. Then we are left with the ocular account given by Prosecution Witness No. 3 at Exh. 50. He was working as a supervisor at the relevant time. As aforesaid, he was declared hostile by the prosecution in view of certain contradictions in his chief examination qua his police statement. In para 9 of his cross-examination he has clearly admitted that, since he was hit by a stone, he fell unconscious and he came to senses only when one Amritlal Patel came to his rescue. He has clearly stated in his chief examination that Amritlal Patel came near him about 10-15 minutes after the incident and by that time the mob had dispersed. It would thus become clear that the witness at Exh. 50 remained unconscious throughout the incident as soon as he was hit by a stone. He could not have therefore seen the incident as deposed to by him in his oral testimony at Exh. 50.

11. In his case also, his dying declaration was recorded and it is at Exh. 55 on the record of the case. Since he has survived after the dying declaration, it has to be treated as his previous statement. In reply to question No. 10 he has clearly stated therein that he did not know who hit him with a stone and thereafter in reply to question No. 12 he has given names of accused Nos. 1 to 4 as persons responsible for the incident. In view of his clear-cut admission in his cross-examination that he remained unconscious all throughout the incident, it would be difficult to accept his version that he had seen those four persons as indulging in the rioting activities culminating into the homicidal death of the deceased.

12. That apart, in para 13 of his cross-examination at Exh. 50, the witness has admitted that he did not know accused Nos. 1 to 4 by name. In para 20 of his cross-examination he has stated that he knew accused Nos. 1 to 4 for more than five years because they were regularly visiting the canteen. It has come in the evidence of the Timekeeper at Exh. 75 that accused Nos. 3 and 4 remained suspended for nearly 3-4 years and were allowed to resume their duties some time in January 1986. The witness at Exh. 50 could not have therefore seen at least these

two accused for five years as they could not be seen in the canteen. It is an admitted position on record that no suspended employee was allowed to enter the precincts of the complex housing all plants of the aforesaid four companies. The aforesaid two accused could not have therefore visited the canteen and the witness at Exh. 50 had no occasion to see them at least prior to January 1986 during the period they remained under suspension. We do not want to highlight the contradictions found in the police statement. The aforesaid study of his evidence at Exh. 50 would clearly give rise to a doubt whether or not he could have been an eye witness to the incident in question.

13. Learned Advocate Shri Shethna for the accused has vehemently urged that the accused have been falsely implicated by the management. In support of his submission he relies on several circumstances appearing on the record. The first and foremost circumstance relied on by him is interpolation of the time of the incident stated to be 12.55 p.m. in the complaint at Exh. 131. The other main circumstance relied on by learned Advocate Shri Shethna for the accused is undue favour shown by the management towards the complainant. It is an admitted position on record that his age as stated by him at the time of recording of his evidence on 2nd November 1987 was 24 years. In the complaint at Exh. 131 he has stated his age to be about 22 years. He could be said to be around 22 or 23 years in age at the relevant time. It is an admitted position that he was working as a temporary helper in the general shift. At the relevant time he could have put in service of hardly 2 or 3 years. It has come in evidence that no worker was permitted to overstay his recess. In the general shift the recess time was 12 noon to 1 p.m. He was stated to be in the canteen around 12.55 p.m. He is stated to have become a victim of the rioting mob at the relevant time. He could not have reported for work after the recess hours. Even if no explanation is called for from him, that can be excused. As stated earlier, his evidence was recorded on 2nd November 1987. The incident occurred on 12th May 1986. The injuries found on his person were quite trivial. The only serious injury was on one finger. It was somewhat substantially damaged. That could not have forced him to remain on leave for a very long time. He has admitted in his oral testimony at Exh.49 that from the date of the incident he remained on leave till the date of his deposition. We do not know whether he resumed even thereafter. Even if we can go by his deposition, he remained on leave for nearly 18 months. The prosecution has not brought on record any material to show that he had in his account the credit balance of leave up to 18 months. It has been admitted by him in his oral testimony at Exh. 49 that he was receiving full salary contrary to the practice of payment of 60% salary on sympathetic grounds as deposed to by the Personnel Manager at Ex. 108. That has been

testified even by the Personnel Manager in his oral testimony at Exh. 108. It has come in evidence through the depositions of the Timekeeper at Exh. 75 and the Personnel Manager at Exh. 108 that every employee has to get his salary by going to the factory or the administrative office in person and nobody is given salary at his residence. It is possible that a person may receive his salary at his residence if he authorises someone else to collect his salary. It is not the case of the complainant at Exh. 49 that he had authorised any one to collect his salary. And yet the complainant at Exh. 49 has clearly asserted that except on two or three occasions after the incident till he gave his deposition he got his salary at his residence. Why it was done so could be anybody's guess. This is not enough. It is clearly admitted in the depositions of the Personnel Manager at Exh. 108 that he was paid medical charges though not supported by vouchers. Medical charges were paid without vouchers at least on two occasions in the sums of something like Rs. 5000 and Rs. 2500. Ordinarily, no company would pay any amount to any person without obtaining vouchers in support of such payment. Learned Advocate Shri Shethna for the accused has highlighted such favour given to the complainant by the management in support of his submission that the management was behind implicating the accused in this case. The motive for the purpose would obviously be to weed out the accused (being union leaders) from the complex. It is an admitted position on record that the accused were leaders of a union popularly known as the union of one Gajanand. That Gajanand also lost his life in inter-union rivalry prevalent in the Atul complex. One more person by the name of Dayabhai Ahir also became a victim of such inter-union rivalry. He is also stated to have lost his life some time in 1985 by means of his homicidal death. Deceased Gunvantbhai was the third person to lose his life in his homicidal death. According to learned Advocate Shri Shethna for the accused, since the union of Gajanand was inimical to the union of Gunvantbhai on account of arriving at a settlement with the management and since the accused were union leaders of the union of Gajanand, the management was out to see that the accused were removed from service and that can be done only if they are convicted by the court. Another important circumstances relied on by learned Advocate Shri Shethna for the purpose is recording of the so-called dying declarations of the three injured persons including the complainant. The injuries found on their persons were too trivial to warrant recording of their dying declarations. The medical evidence on record bears clear testimony to the trivial injuries found on the persons of the complainant and the other injured witnesses at the relevant time. it has been urged before us by learned Advocate Shri Shethna for the accused that recording of dying declarations of the complainant and his two injured companions was at the instance of the management and none else. The circumstances highlighted by learned Advocate Shri Shethna for the accused in

support of his submission that the management might be responsible for falsely implicating the accused in this case appear to be attractice in the first blush. We should however like to refrain ourselves from expressing any opinion on that count.

14. In view of our aforesaid discussion, we are of the opinion that the prosecution has not been able to bring the guilt home to the accused or any of them beyond any reasonable doubt. We think that the learned trial Judge was not justified in passing the judgment and order of conviction and sentence against accused Nos. 1 to 4 and 8. He was however quite justified in ordering acquittal of the remaining accused, that is, accused Nos. 5, 6, 7 and 9.

15. In the result, Criminal Appeal No. 442 of 1988 succeeds and Criminal Appeal No. 666 of 1988 fails. The judgment and order of conviction and sentence qua the appellants of Criminal Appeal No. 442 of 1988 (accused Nos. 1 to 4 and 8) is quashed and set aside and these accused-appellants are acquitted of the charge levelled against them. The judgment and order of acquittal passed by the learned trial Judge qua the respondents of Criminal Appeal No. 666 of 1988, that is, accused Nos. 5, 6, 7 and 9 is maintained. Accused Nos. 2 to 4 are in jail. They are ordered to be released forthwith if no longer required in any other case. Accused Nos. 1 and 8 are on bail. Their bail bonds are ordered to be cancelled. Accused Nos. 5, 6, 7 and 9 as the respondents in Criminal Appeal No. 666 of 1988 are also set out on bail. Their bail bonds are also ordered to be cancelled. The muddamal is ordered to be disposed of in accordance with the directions given by the learned trial Judge.

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